

INCOME TAX AND SOCIAL SERVICES CONTRIBUTION ASSESSMENT (No. 2).

No. 28 of 1952.

An Act to amend the *Income Tax and Social Services Contribution Assessment Act 1936-1951*, as amended by the *Income Tax and Social Services Contribution Assessment Act 1952*, and for other purposes.

[Assented to 16th June, 1952.]

[Date of commencement 14th July, 1952.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title
and citation.

1.—(1.) This Act may be cited as the *Income Tax and Social Services Contribution Assessment Act (No. 2) 1952*.

(2.) The *Income Tax and Social Services Contribution Assessment Act 1936-1951**, as amended by the *Income Tax and Social Services Contribution Assessment Act 1952*†, is in this Act referred to as the Principal Act.

* Act No. 27, 1937, as amended by No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951.

† Act No. 4, 1952.

(3.) Section one of the *Income Tax and Social Services Contribution Assessment Act 1952* is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Income Tax and Social Services Contribution Assessment Act 1936-1952*.

2. Section twenty-three of the Principal Act is amended by omitting paragraph (o) and inserting in its stead the following paragraph :—

“(o) income, other than income from the production, treatment or sale of pyrites, derived from the working of a mining property in Australia or in the Territory of New Guinea, where the working of the mining property by the taxpayer for the period from the commencement by him of mining operations on that property to the end of the year of income has been principally for the purpose of obtaining gold, or gold and copper, and where, in the latter case, the value of the gold obtained from that property by the taxpayer in that period is not less than two-fifths of the value of the output of that property in that period, other than the value of pyrites ;”.

3. After section twenty-six A of the Principal Act the following section is inserted :—

“26B.—(1.) This section applies to an amount (in this section referred to as an insurance recovery) received, by a taxpayer or a partnership carrying on in Australia a business of primary production, by way of insurance for or in respect of a loss of live stock.

Insurance recoveries on losses of live stock.

“(2.) Where a taxpayer receives an insurance recovery which is included in his assessable income of a year of income, he may elect that that assessable income shall be reduced by an amount equal to four-fifths of the insurance recovery.

“(3.) Where an insurance recovery is received by a partnership, each partner in the partnership may make an election under the last preceding sub-section in relation to that part of the insurance recovery which is included in his individual interest in the net income of the partnership.

“(4.) Where an insurance recovery is received by the trustee of a trust estate—

(a) the trustee may make an election under sub-section (2.) of this section in relation only to that part of the insurance recovery which is included in the net income of the trust estate in respect of which he is liable to be assessed and to pay tax under the provisions of Division 6 of this Part ; and

(b) each beneficiary in the trust estate who is not under a legal disability and is presently entitled to a share of the net income of the trust estate, being a share which includes a part of the insurance recovery, may make an election under sub-section (2.) of this section in relation to that part.

“(5.) The election which a taxpayer may make under sub-section (2.) of this section shall be made in writing and lodged with the Commissioner on or before the date of lodgment of the return of income of the year of income in which the insurance recovery is received, or within such further time as the Commissioner allows.

“(6.) Where a taxpayer has made an election under sub-section (2.) of this section, his assessable income of the year in which the insurance recovery is received shall be reduced by an amount equal to four-fifths of the insurance recovery, or of the part of the insurance recovery to which his election relates, and there shall be included in his assessable income of each of the next four succeeding years an amount equal to one-fifth of the insurance recovery, or of that part of the insurance recovery, as the case may be.

“(7.) Where, in a year of income, a taxpayer who has made an election under sub-section (2.) of this section—

(a) appears to the Commissioner to be about to leave Australia ;

(b) dies ;

(c) becomes bankrupt or insolvent, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of any of his property for their benefit ; or

(d) being a company, commences to be wound up,

there shall, if the Commissioner so determines, be included in the assessable income of the taxpayer of that year of income any amount which would otherwise be included, in pursuance of this section, in the assessable income of any subsequent year of income.

“(8.) An amount which, in accordance with either of the last two preceding sub-sections is included in the assessable income of a taxpayer of any year shall, for all purposes of this Act, be deemed to be assessable income derived by him during that year from the carrying on by him in Australia, during that year, of a business of primary production.”.

Depreciation.

4. Section fifty-four of the Principal Act is amended by inserting in paragraph (b) of sub-section (2.), after the word “purposes” (second occurring), the words “, except where the improvements are provided for the accommodation of employees, tenants or sharefarmers engaged in or in connexion with those pursuits”.

5. After section fifty-seven of the Principal Act the following section is inserted :—

“ 57AA.—(1.) Notwithstanding anything contained in the last three preceding sections, in the case of a unit of property to which this section applies—

Special
depreciation
allowance to
primary
producers.

- (a) the annual depreciation allowable under this Act shall be twenty per centum of the cost of the unit ; and
- (b) the deduction shall be allowed in accordance with this section.

“(2.) Subject to the next succeeding sub-section, this section applies to units of property in respect of which depreciation is allowable to the taxpayer under section fifty-four of this Act and which—

- (a) are used during the year of income wholly and exclusively for the purposes of agricultural or pastoral pursuits ; or
- (b) being structural improvements, are situated on land used during the year of income for those purposes,

but does not apply to motor vehicles designed primarily and principally for the transport of persons.

“(3.) This section does not apply—

- (a) to a unit of property, being a structural improvement, unless the unit was completed—
 - (i) after the thirtieth day of June, One thousand nine hundred and fifty-one ; and
 - (ii) before the first day of July, One thousand nine hundred and fifty-five, or, if the construction of the unit was commenced on or before that date, before the first day of July, One thousand nine hundred and fifty-six ;
- (b) to a unit of property, not being a structural improvement, unless the unit was first used by the taxpayer for the purpose of producing assessable income or was first installed ready for use for that purpose—
 - (i) after the thirtieth day of June, One thousand nine hundred and fifty-one ; and
 - (ii) before the first day of July, One thousand nine hundred and fifty-five ; or
- (c) to a unit of property in respect of which depreciation was allowed or is allowable under section fifty-seven A of the *Income Tax Assessment Act 1936-1946*, or of that Act as amended.

“(4.) Where structural improvements are provided for the residential accommodation of employees, tenants or sharefarmers

engaged in, or in connexion with, the agricultural or pastoral pursuits carried on upon the land on which the improvements are built—

- (a) if the cost of a structural improvement designed to provide residential accommodation for one person exceeds Two thousand pounds, the cost shall, for the purposes of this section, be deemed to be Two thousand pounds ; and
- (b) if the cost of a structural improvement designed to provide residential accommodation for more than one person exceeds the amount ascertained by multiplying Two thousand pounds by the number of those persons, the cost shall, for the purposes of this section, be deemed to be the amount so ascertained.

“(5.) If either of the paragraphs of the last preceding sub-section applies to any improvements, depreciation shall be allowed in respect of those improvements in accordance with the provisions of this subdivision other than this section in addition to depreciation in accordance with this section, and for that purpose the cost of those improvements shall be deemed to be the amount by which the actual cost exceeds the amount which is deemed to be the cost for the purposes of this section.

“(6.) A structural improvement designed to provide residential accommodation for a person and any of his relatives shall, for the purposes of sub-section (4.) of this section, be deemed to be designed to provide residential accommodation for one person only.

“(7.) Deductions allowable in accordance with this section in respect of a unit of property shall commence to be allowed in the assessment of the taxpayer upon his income of the year of income during which that unit is first used for the purpose of producing assessable income, or is first installed ready for use for that purpose, and no such deduction shall be allowed in the assessment of the taxpayer upon his income of a year of income after the fourth year of income succeeding that year.

“(8.) The provisions of sub-section (3.) of section fifty-six of this Act apply in ascertaining the cost of a unit of property for the purposes of this section.”.

Repeal of
section 5 A.

6.—(1.) Section fifty-seven A of the Principal Act is repealed.

(2.) Notwithstanding the repeal of section fifty-seven A of the Principal Act, that section continues, and shall be deemed to have at all times continued, to apply in relation to property which—

(a) not later than—

- (i) the thirtieth day of June, One thousand nine hundred and fifty-one ; or

(ii) in the case of a taxpayer who has adopted, or who is deemed to have adopted, under this Act, in lieu of the year of income which ended on the thirtieth day of June, One thousand nine hundred and fifty-one, an accounting period which ended after that date—the last day of that accounting period,

was acquired by the taxpayer and used by him for the purpose of producing assessable income or was installed ready for use for that purpose ; or

(b) not later than the thirtieth day of June, One thousand nine hundred and fifty-one—

(i) was acquired by the taxpayer ; or

(ii) if not so acquired, was appropriated to a contract for the purchase by the taxpayer of that property, and before the commencement of the year of income beginning on the first day of July, One thousand nine hundred and fifty-two, has been or is used by the taxpayer for the purpose of producing assessable income or has been or is installed ready for use for that purpose.

7. Section sixty-one of the Principal Act is amended by omitting the words “, section fifty-seven A ”.

Property used
partly for
producing
assessable
income.

8. Section eighty-three of the Principal Act is amended by omitting from sub-section (1.) the proviso to the definition of “ term of the lease ”.

Definitions.

9.—(1.) Section eighty-seven of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (1.) the word “ made ” and inserting in its stead the word “ completed ” ;
and

Value of
improvements
included in
assessable
income.

(b) by adding at the end thereof the following sub-section :—

“ (3.) For the purposes of the application of this section in relation to improvements made upon land which is the subject of a lease of indefinite duration, that lease shall be deemed to expire at the end of the period of two years commencing on the day after the day on which those improvements were completed.”.

(2.) The amendment made by paragraph (b) of the last preceding sub-section applies only in relation to improvements completed after the end of the year of income which ended on the thirtieth day of June, One thousand nine hundred and fifty-one.

Deductions
to lessee.

10.—(1.) Section eighty-eight of the Principal Act is amended by adding at the end thereof the following sub-sections :—

“(5.) For the purposes of the application of this section in relation to—

(a) a premium paid in respect of land or machinery which is, or premises which are, the subject of a lease of indefinite duration ; or

(b) expenditure incurred in making improvements upon land which is the subject of such a lease,

the taxpayer who paid the premium or incurred the expenditure, as the case may be, may elect that the period of the lease unexpired at the date when the premium was paid or when the expenditure was incurred shall be deemed to be two years, and where such an election has been made, the provisions of this section shall be applied accordingly.

“(6.) An election under the last preceding sub-section shall be made in writing and lodged with the Commissioner on or before the date of lodgment of the return of income of the year of income in which the premium is paid or the expenditure is incurred, or within such further time as the Commissioner allows.”

(2.) The amendment made by this section applies only in relation to premiums paid, or expenditure incurred, after the end of the year of income which ended on the thirtieth day of June, One thousand nine hundred and fifty-one.

Not to apply
to certain
leases.

11. Section eighty-nine of the Principal Act is amended by omitting the words “perpetual lease without revaluation” and inserting in their stead the words “lease granted in perpetuity or for a term of not less than ninety-nine years”.

12. After section one hundred and twenty-four c of the Principal Act the following section is inserted in Division 10 of Part III. :—

Expenditure
not deductible.

“124D.—(1.) Notwithstanding any other provision of this Act, where a taxpayer derives from the working of a mining property income which is exempt from income tax in pursuance of paragraph (o) of section twenty-three of this Act and income which is assessable income, a deduction from assessable income shall not be allowed in respect of or in relation to—

(a) losses or outgoings, not being losses or outgoings of capital or of a capital nature, incurred by the taxpayer in relation to the working of that property, to the extent to which they would have been incurred if the assessable income derived from the working of that property had not been derived ;

- (b) expenditure specified in sub-section (1.) of section one hundred and twenty-two of this Act, except to the extent that that expenditure—
- (i) was incurred after the year of income ending on the thirtieth day of June, One thousand nine hundred and fifty-two ; and
 - (ii) would not have been incurred if the assessable income derived from the working of that property had not been derived,
- and was in respect of—
- (iii) plant used in, or development of the mining property for the purposes of, the recovery of pyrites from ore mined on that property ; or
 - (iv) plant used in the transport on that property of ore mined on that property ;
- (c) depreciation of a unit of plant used, or installed ready for use, in connexion with the working of that property, other than depreciation—
- (i) of a unit of plant to which sub-paragraph (iii) or (iv) of the last preceding paragraph refers ; and
 - (ii) which would not have occurred if the assessable income derived from the working of that property had not been derived ;
- (d) an amount appropriated by the taxpayer for expenditure on necessary plant to be used, to any extent, in gaining or producing that exempt income, or on development of the mining property wholly or partly for the purposes of gaining or producing that exempt income ;
- (e) so much of the deduction otherwise allowable under sub-section (3.) of section one hundred and twenty-four of this Act as, in the opinion of the Commissioner, should be excluded from the allowable deductions ; or
- (f) a premium paid by the taxpayer in relation to a lease of the mining property.

“(2.) Where, under section one hundred and twenty-two B of this Act, a deduction has been allowed or is allowable from the assessable income of a year of income in relation to an amount appropriated for expenditure of a capital nature on necessary plant for use on, or for development of, a mining property referred to in paragraph (c) of section twenty-three of this Act, the assessable income of the year of income next succeeding that year of income shall include so much of the amount allowed or allowable as a deduction as has not been expended, at the end of that next succeeding year of income, by way of expenditure of a capital nature on necessary plant to be used

wholly and exclusively in gaining or producing assessable income, or on development of the mining property wholly and exclusively for the purposes of gaining or producing assessable income.”.

Offences. 13. Section two hundred and twenty-one v of the Principal Act is amended—

(a) by omitting from paragraph (e) the word “ or ” (last occurring) ; and

(b) by inserting after paragraph (f) the following word and paragraph :—

“ ; or (g) make, for the purposes of any of the regulations prescribing matters in relation to this Division, a declaration which is false or misleading in a particular.”.

Interpretation. 14. Section two hundred and twenty-one yA of the Principal Act is amended—

(a) by inserting after the definition of “ advance payment ” in sub-section (1.) the following definitions :—

“ ‘ estimated taxable income ’, in relation to a year of income, means the amount of the estimated taxable income of the taxpayer for that year of income as shown in a statement furnished to the Commissioner under section two hundred and twenty-one yDA of this Act ;

“ ‘ provisional income ’, in relation to a year of income means—

(a) an amount equal to the taxable income of the taxpayer for the year next preceding that year of income ; or

(b) where the taxpayer commenced, during the year next preceding that year of income, to derive income from any source—such amount as the Commissioner estimates would have been the taxable income for that preceding year if the taxpayer had commenced, at the beginning of that preceding year, to derive income from that source ; ” ; and

(b) by adding at the end thereof the following sub-section :—

“ (4.) All amounts of provisional tax shall be calculated to the nearest pound.”.

15. Section two hundred and twenty-one YC of the Principal Act is amended— Amount of provisional tax.

(a) by omitting sub-section (1.) and inserting in its stead the following sub-sections :—

“ (1.) Subject to this Division, the amount of provisional tax payable by a taxpayer in respect of the income of a year of income is—

(a) where the provisional income of the taxpayer is equal to his taxable income for the year next preceding that year of income—an amount equal to the income tax assessed in respect of the taxable income of that next preceding year ; and

(b) in any other case—an amount equal to the income tax which would have been payable in respect of the taxable income of that next preceding year if that taxable income had been equal to the provisional income, and had consisted of income from personal exertion and income from property in such proportions as the Commissioner determines.

“ (1A.) Where the assessable income of the taxpayer for the year of income next preceding a year of income included salary or wages, the provisional tax payable in respect of the income of that last-mentioned year of income is such part of the provisional tax otherwise payable in accordance with the last preceding sub-section as the Commissioner determines.” ; and

(b) by omitting sub-sections (2A.), (3.) and (6.).

16. Section two hundred and twenty-one YD of the Principal Act is amended by adding at the end thereof the following sub-section :— When provisional tax payable.

“ (2.) Where, under the last preceding sub-section, the due date for payment of provisional tax in respect of income of a year of income would be a date before the thirty-first day of March in that year, that provisional tax shall be due and payable on that last-mentioned date.”.

17. After section two hundred and twenty-one YD of the Principal Act the following sections are inserted :—

“ 221YDA.—(1.) A taxpayer who receives a notice of assessment on which is notified the amount of provisional tax payable in respect of the income of a year of income (including an accounting period adopted by the taxpayer under this Act) shall, not later than— Provisional tax on estimated income.

(a) the due date for the payment of the tax notified by that notice ; or

(b) the thirty-first day of March in that year of income or, in the case of an accounting period, the last day of the ninth month of that accounting period,

whichever is the later, make an estimate of—

- (c) the amount of his taxable income for the whole of that year of income ;
- (d) the respective amounts of income from salary or wages, from property and from other sources comprised in that estimated taxable income ; and
- (e) the amount of the deductions which have been and will be made from his salary or wages during that year of income in accordance with section two hundred and twenty-one c of this Act.

“(2.) Where the amount of the taxable income of the taxpayer as estimated by him exceeds the provisional income by more than one-fifth of the provisional income, the taxpayer shall, and in any other case the taxpayer may, not later than the date referred to in paragraph (a) or (b) of the last preceding sub-section, whichever is applicable, furnish to the Commissioner a statement showing the amounts estimated in pursuance of the last preceding sub-section.

“(3.) Where a taxpayer duly furnishes to the Commissioner such a statement in respect of a year of income, the amount of provisional tax payable by the taxpayer in respect of the income of that year of income is, subject to sub-section (5.) of this section, an amount ascertained by—

- (a) calculating the amount of income tax that would have been payable by the taxpayer in respect of the income of the year of income next preceding that year of income if his taxable income of that next preceding year had consisted of the estimated amounts of income from personal exertion and income from property comprised in the estimated taxable income ;
- (b) increasing or reducing the amount so calculated to the extent and in the manner (if any) prescribed in pursuance of sub-section (2.) of section two hundred and twenty-one YC of this Act in relation to provisional tax in respect of the income of the first-mentioned year of income ; and
- (c) deducting from the resultant amount the estimated amount of deductions under section two hundred and twenty-one c of this Act as shown in the statement.

“(4.) Where provisional tax is payable in accordance with the last preceding sub-section—

- (a) the taxpayer shall calculate the amount of that provisional tax ; and

- (b) that provisional tax is, notwithstanding the provisions of the last preceding section, due and payable on the date which is the date not later than which the taxpayer is required or permitted to furnish the statement referred to in the last preceding sub-section.

“(5.) Where the Commissioner has reason to believe that the taxable income which will be or has been derived by a taxpayer in a year of income is greater than the estimated taxable income or, if the taxpayer has not duly furnished a statement in accordance with sub-section (2.) of this section in respect of that year of income, is greater than the provisional income of that year, the Commissioner may—

- (a) estimate the respective amounts which, in his opinion, should have been the amounts estimated by the taxpayer in pursuance of sub-section (1.) of this section in respect of that year of income ;
- (b) calculate the amount of provisional tax that would be payable if the amounts so estimated had been shown in a statement duly furnished by the taxpayer under sub-section (2.) of this section ; and
- (c) serve on the taxpayer a notice in writing specifying the amount of provisional tax so calculated,

and the amount of provisional tax so specified is the amount of provisional tax payable by the taxpayer.

“(6.) A notice under the last preceding sub-section shall state the amount of any additional provisional tax which becomes payable as a result of the giving of the notice, and shall specify a date as the due date for payment of that additional provisional tax, being a date not less than fourteen days after the date of service of the notice, and the amount of additional provisional tax so stated in the notice is, notwithstanding the provisions of the last preceding section, due and payable on that date.

“221YDB.—(1.) Where, in respect of a year of income—

- (a) a taxpayer does not furnish, within the time allowed by the last preceding section, a statement of estimated taxable income which he is required or permitted by that section to furnish ; or
- (b) the taxpayer does so furnish such a statement and the provisional tax payable is an amount ascertained by reference to that statement,

Penalty where
income under-
estimated.

and the amount of the provisional income, or of the estimated taxable income, as the case may be, is less than four-fifths of the taxable income of the year of income, the taxpayer is liable to pay to the Commissioner, by way of penalty, an amount equal to one-tenth of the amount by which the provisional tax payable in respect of the income of that year of income is less than the income tax that would

be payable by the taxpayer upon a taxable income consisting of four-fifths of his taxable income from personal exertion and four-fifths of his taxable income from property.

“(2.) An amount which becomes payable to the Commissioner under the last preceding sub-section is a debt due to the Queen on behalf of the Commonwealth and may be sued for and recovered in a court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

“(3.) In an action against a person for the recovery of such an amount, a certificate in writing, signed by the Commissioner, the Second Commissioner or a Deputy Commissioner, certifying that the sum specified in the certificate was, at the date of the certificate, due by that person to the Queen on behalf of the Commonwealth under the provisions of this section is evidence of the matters stated in the certificate.

“(4.) Where the Commissioner is satisfied that a penalty under this section became payable by a taxpayer in relation to provisional tax for a year of income by reason of circumstances affecting his taxable income of that year of which circumstances he was not aware at the date not later than which he was required or permitted by the last preceding section to furnish a statement of estimated taxable income, the Commissioner may remit the penalty or a part of the penalty.”.

Provisional
tax payable
by wool-growers
for year of
income
1951-52.

18.—(1.) This section applies to provisional tax payable by a taxpayer, being a wool-grower, in respect of the income of the current year of income.

(2.) A taxpayer may apply to the Commissioner for deferment or reduction, in accordance with this section, of provisional tax to which this section applies and which is payable by him.

(3.) The applicant shall, unless he has furnished to the Commissioner the return of his income for the current year of income, furnish to the Commissioner an estimate of his taxable income for the whole of the current year of income.

(4.) Upon receipt of an application in accordance with this section, the Commissioner shall, for the purposes of this section, calculate the amount of income tax that would be payable by the taxpayer upon his taxable income of the whole of the current year of income as estimated by the Commissioner, having regard to the estimate furnished by the taxpayer, or the taxpayer's return of income for the current year of income, as the case may be, and may—

(a) reduce the amount of provisional tax to—

- (i) three-fifths of that provisional tax ; or
- (ii) the amount of the income tax so calculated,
whichever is the greater ; or

(b) defer the due date for payment of so much of the provisional tax as exceeds the greater of the amounts specified in sub-paragraphs (i) and (ii) of the last preceding paragraph.

(5.) In this section—

“the current year of income” means the year of income which commenced on the first day of July, One thousand nine hundred and fifty-one;

“wool-grower” means a taxpayer who carried on in Australia, at any time during the year of income next preceding the current year of income, a business of primary production and establishes to the satisfaction of the Commissioner that not less than one-tenth of his assessable income of that next preceding year of income consisted of income derived from the proceeds of the sale of wool in the course of that business.

(6.) For the purposes of the definition of “wool-grower” in the last preceding sub-section, where a taxpayer is a beneficiary in a trust estate, or is a partner in a partnership, and the trustee or partnership has, during the year of income next preceding the current year of income, carried on in Australia a business of primary production in the course of which assessable income has been derived from the proceeds of the sale of wool, such part as the Commissioner determines of the assessable income so derived during that next preceding year of income shall be deemed to be derived by the taxpayer from the proceeds of the sale of wool in the course of a business of primary production carried on in Australia by him during that next preceding year of income.

(7.) This section shall be deemed to have come into operation on the eleventh day of March, One thousand nine hundred and fifty-two.

19.—(1.) The repeal effected by section six of this Act applies, subject to sub-section (2.) of that section, to assessments in respect of income of the year of income which commenced on the first day of July, One thousand nine hundred and fifty-one.

**Application of
amendments.**

(2.) The amendments effected by sections three, four, five, eight, nine, ten and eleven of this Act apply to assessments in respect of income of the year of income which commenced on the first day of July, One thousand nine hundred and fifty-one, and in respect of income of all subsequent years.

(3.) The amendments effected by sections two, seven and twelve of this Act apply to assessments in respect of income of the year of income commencing on the first day of July, One thousand nine hundred and fifty-two, and in respect of income of all subsequent years.

